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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE GENERIC)
INVESTIGATION INTO U S WEST)
COMMUNICATIONS, INC.'S COMPLIANCE)
WITH CERTAIN WHOLESALE PRICING)
REQUIREMENTS FOR UNBUNDLED)
NETWORK ELEMENTS AND RESALE)
DISCOUNTS)

Docket No. T-00000A-00-0194

ARIZONA CORPORATION COMMISSION,)

Complainant,)

v.)

Docket No. T-01051B-02-0871

QWEST CORPORATION,)

Respondent.)

**STAFF RESPONSE TO THE MOTIONS OF MTI,
QWEST AND TIME WARNER**

On January 16, 2003, Mountain Telecommunications, Inc. ("MTI") filed a Motion for an Injunction with the Arizona Corporation Commission ("ACC" or "Commission") to enjoin Qwest Corporation ("Qwest") from charging "unjust and unreasonable charges" for transport facilities. MTI Motion at p. 1. On February 21, 2003, Time Warner Telecom of Arizona ("TWA") filed Comments on the issues raised by MTI and requested an expedited hearing in Phase III or modification of Decision No. 64922. On February 12, 2003, Qwest filed a Motion to Reopen the Record and Modify

1 the Ordering provisions in Decision 65451 (Phase IIA) with regard to the analog loop rate.¹

2 Staff recommends that the Commission reopen the record of Phase II of this case on its own
3 initiative pursuant to A.R.S. Section 40-252, to address the issue raised by MTI and Time Warner.²
4 Staff's recommendation is based upon recent discovery it conducted after receiving MTI's Motion to
5 determine whether Qwest's application of the transport rates was correct and consistent with the
6 intent of the Order. As a result of recent discovery, the Staff has determined that the application of
7 the combined transport and entrance facility rate is producing an unexpected and unreasonable rate
8 increase for some customers, which was not intended by the Phase II Order.

9 Prior to Phase II, Qwest charged a separate "entrance facility" rate and a separate "transport"
10 charge. In Phase II, these two rates were replaced with one "transport" charge, subject to further
11 review in Phase III. The combined rate and the cost studies, however, were based upon the mistaken
12 assumption that when a CLEC leased a circuit, they would also incur an entrance facility charge.
13 Upon reviewing MTI's and Qwest's Responses to Staff's data requests, Staff was able to determine
14 that the assumption that a carrier would always lease an entrance facility from Qwest when it leases
15 transport is wrong. In actuality, there appear to be many ways a circuit can be connected, and circuits
16 are connected in ways that do not include an entrance facility.

17 Where the carrier continues to lease both an entrance facility and transport circuit from
18 Qwest, the impact of the new combined rate is insignificant. For example, a 15 mile DS1 circuit plus
19 entrance facility had an old rate of \$139.51 (\$89.42 for the entrance facility plus a \$35.99 fixed
20 transport plus \$.94 cents per mile transport). After Phase II, the new combined transport and entrance
21 facility rate was \$148.97. This represented an increase of approximately 7 percent. However, where
22 the carrier is not leasing an entrance facility from Qwest with all circuits, as is the case with MTI, the
23 actual effect of the new combined rate is much greater than the expected 7%.

24 ...

25
26 ¹ Staff does not believe that either Qwest or MTI raised the specific issues complained of herein in either Exceptions or in
a Petition for Rehearing.

27 ² Staff believes that it is more appropriate to address MTI's issue through reopening the record in phase II of the 194
28 Docket rather than attempting to address it in the OSC (871) Docket. The OSC Docket deals specifically with Qwest's
noncompliance with the Phase II Order; MTI's issue, on the other hand, is technically not a compliance issue but rather
raises an issue having to do with a mistaken assumption underlying one of the rates adopted by the Commission.

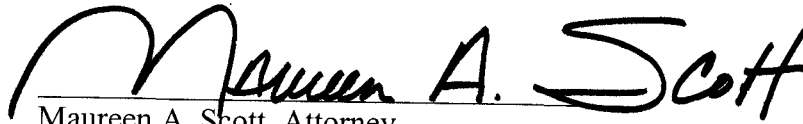
1 The new combined rate Qwest is charging, therefore, imposes significant additional costs on
2 carriers such as MTI for entrance facilities that they are not actually using. Qwest is effectively
3 charging for facilities it is not actually providing. The effect of this has been an inequitable and
4 unanticipated increase in rates for some carriers such as MTI.

5 Because such a result clearly was never contemplated by the Commission or the parties, Staff
6 recommends that the Commission review this issue on its own initiative at this time and grant relief
7 under one of the following options until the transport issue is reviewed again in Phase III. The first
8 option would be for the Commission to reinstate the prior Interconnection Entrance Facility and
9 Direct Trunked Transport recurring rates so that carriers would only pay for the facilities they are
10 actually leasing from Qwest. The second option would be for the Commission to require Qwest to
11 deduct the prior Entrance Facility recurring rate (i.e. \$89.42 for a DS1 entrance facility) from the new
12 combined rate for those Direct Trunked Transports to which the prior Entrance Facility rate did not
13 apply (or for new Direct Trunked Transport, deduct from those to which the Entrance Facility rate
14 would not have applied).

15 The Commission could at the same time, if it so desired, reopen the record in Phase II(A) to
16 address the issue raised by Qwest pertaining to the analog port rate. The Commission in Decision
17 No. 65461 clearly specified an analog port rate of \$1.61, consistent with Staff's recommendation.
18 This was reaffirmed by the Hearing Officer in his February 25, 2003 Procedural Order. In addition,
19 the Procedural Order states that the issue will be reviewed in Phase III. See February 25, 2003
20 Procedural Order at page 2.

21 Qwest's argument that the Commission Order's reference to a 60% allocation of the switch
22 costs to the port and 40% to usage, with an 80% fill factor, produces a different port rate, does
23 indicate, as the ALJ ordered, that this issue should be subject to further review. Staff would support
24 either reopening the record in Phase IIA, or addressing the issue in Phase III. When the issue is
25 reviewed, both the port rate and the proper allocation between port and usage as requested by AT&T,
26 should be examined.

1
2 RESPECTFULLY SUBMITTED this 7th day of March 2003.
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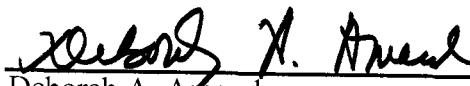
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